



CASE REPORT

1. Complaint reference number	311/09
2. Advertiser	Diageo - Bundaberg Rum
3. Product	Alcohol
4. Type of advertisement	TV
5. Nature of complaint	Health and safety – section 2.6
6. Date of determination	Wednesday, 8 July 2009
7. DETERMINATION	Dismissed

DESCRIPTION OF THE ADVERTISEMENT

This TVC for Bundaberg Rum, features the Bundy Bear character portrayed as being in a US bourbon bar. The ad commences with a group of 4 characters outside the bar, planning something. The Bundy Bear and two men appear to go towards the bar and one man, carrying a ladder, remains outside. The neon sign displays “BILLY BOB’S BOURBON BAR”. The Bear and a friend walk in to the bar carrying an esky and asks the bartender “Got any smooth Bundy red rum?”. Barman replies “no, we’re a bourbon bar and rum aint smooth.” Bear replies “well, lucky we brought our own” as he hands a bottle to the barman. Barman takes a drink and says “Damn, that is smooth, but you can’t bring it in here.” The Bear says “well why not, you’re BYO right?” as he looks outside. The man who remained outside is shown to be up on a ladder and has tampered with the neon sign. The sign sparks and is seen to read “BYO Bar”. The group is then shown to be in the bar drinking the Bundaberg Red. Voice over promotes the smoothness of the beverage.

THE COMPLAINT

A sample of comments which the complainant/s made regarding this advertisement included the following:

The ABAC states that alcohol advertising should not have a strong or evident appeal to children or adolescents and Not depict any direct association between the consumption of alcohol beverages and the engagement in any potentially hazardous activity.

The first part of the complaint depicts a rather risky activity being undertaken by one of the young men – simply to be allowed to drink their byo bundy red rum. This involves electrical work on a neon sign while on a ladder. The scene is irrelevant to the nature of the drink; it is carried out (i.e., sign alteration) to take the alcohol into licensed premises (which is not permitted anyway). Given young males’ propensity for risk taking anyway, but particularly after drinking alcohol and in the presence of ‘their mates’, this scene is irresponsible. Deaths amongst young males (and older males) through inadequate electrical safety procedures are tragically not infrequent. This issue alone warrants the ad being withdrawn.

It is well known in commercial marketing that animal characters have particular appeal to children and youth. Hence the main focus of this complaint is that an animal character in a friendly, happy, humorous scene would have considerable appeal to young children and youth – whether intended to or not by the advertiser. The considerable evidence that animal characters hold special appeal to children and youth has led many marketers to use such characters in targeting children and youth for a range of products – including tobacco and alcohol.

This common knowledge and extensive evidence is acknowledged by the CTICP ‘Advisory Note’ which provides guidance (Clause 6.23) in assessing whether or not an advertisement is directed to children. This clause alerts assessors to ‘animals’ and ‘animation’ (among other things) as indicative of an ad being directed towards children.

Furthermore, a previous ABAC Complaints Panel (11/06) acknowledged the impact of animal characters on children – although a later Panel (108/08) did not (which in itself is of concern).

I believe that this ad breaches the ABAC through the use of an animal character which would have considerable appeal to children and youth. The exposure restrictions do not ensure that children will not be exposed to this ad as studies have shown that many children are watching television well beyond 8.30pm at night and during daytime live sporting events (as in my family's case). Given that the advertiser knowingly inserted this ad in a daytime program watched by many underage youth and children, it appears that this advertiser (and the ASB) should take more notice of Ms Fiona Jolly's recent media statement (17 March 2009), "Advertisers need to consider the impact of their advertisements on the possible audience".

THE ADVERTISER'S RESPONSE

Comments which the advertiser made in response to the complaint/s regarding this advertisement included the following:

We would like to take this opportunity to make some comments about the advertisement for consideration by the Board and to respond to the specific complaint. We would also like to confirm our long-standing support for the Advertising Standards Board and commitment to uphold the AANA Advertiser Code of Ethics and the Alcohol Beverages Advertising Code (ABAC), as well as our best-practice global marketing standards.

This same complaint was made to the ABAC Complaints Adjudication Panel on 1 June 2009. We're pleased to note that the ABAC Complaints Panel has dismissed the complaint. Please see attached our response to ABAC regarding this exact same complaint and a copy of the final ABAC determination.

Advertising pre-approval

Diageo obtained full and complete clearance for the advertisement from the Alcohol Advertising Pre-Vetting System (AAPS) prior to final production or broadcast of the advertisement. Copies of these clearances are attached for your reference.

Specific Response

We have reviewed Section 2 of the AANA Code of Ethics in light of the complaint received and the TVC in question and believe that this TVC does not breach any provisions of the Section 2 of the AANA Code of Ethics.

(a) Section 2.6 of the AANA Code of Ethics – Health & Safety

The Complainant specifically lists the nature of their complaint as being in regards to Section 2.6 of the AANA Code of Ethics – which provides that the advertisement must not depict material contrary to Prevailing Community Standards on Health and Safety.

In specific response to this complaint we note the following:

- The man in question is also portraying safe practices in safely carrying and using a sturdy ladder (which satisfies Australian safety standards). The man is also wearing an Australian standard safety helmet. The man does not ascend further than 1 metre. This clearly gives the impression that safety is an important issue. The average person does not put on a hard hat to climb a ladder and the fact that this man in the advertisement has done so shows that he takes safety seriously. He is carrying a tool belt and his attention to safety indicate that he is a professional licensed electrician, and thereby formally trained in health safety practices of this specialised field. He has not scaled the side of the building nor is he clambering all over the roof.*
- The TVC does not in any way depict that the man climbing the ladder has consumed any alcohol beverages prior to or during the activity of climbing the ladder and turning off the lights on the neon signs. There is no direct connection between the consumption of alcoholic beverages and the activity of climbing the ladder and turning off the lights.*

Accordingly, we strongly believe that this TVC and the activity of climbing a ladder and turning off certain letters in the neon sign is not contrary to Prevailing Community Standards on health and safety.

(b) AANA Code of Advertising & Marketing to Children

The AANA Code of Advertising & Marketing to Children applies to Advertising or Marketing Communications (hence this TVC), which, having regard to the theme, visuals and language used, are directed primarily to Children (children 14 years or younger) and are for Product. We do not believe that, having regard to the theme, visuals and language used, that this TVC is directed primarily to Children for the following reasons:

Theme, visuals and language used in the advertisement

The advertisement takes place in a clearly adult-only venue, being a licensed bourbon bar. A bourbon bar is a bar specialising in many different bourbons, which requires quite a mature taste and would not appeal to children as a typical setting. The ad takes place in this licensed venue in the evening, clearly after dark as the neon lights are on and traffic is absent. The patrons of the bar are adults only who are (and appear to be) all over the age of 25 years.

The music playing in the background of the advertisement is older style deep south American music. American blue grass music generally has an older 30+ year old male skewed appeal, and is certainly not part of the top 40 hit list or usual listening practices of Australian children. The advertisement further depicts a light-hearted situation where the four mates play a practical joke on the bar-tender to allow him to broaden the repertoire of drinks sold in his venue to suit the tastes of all Australians.

The language used is all adult based and non-offensive. All persons in the advertisement are over 25 years of age, and appear to be over 25 years of age.

We have gone to considerable lengths on many levels to ensure the setting is for a 25+ year old consumer. The rustic nature of the bar; the bar full of 25+ consumers; the premium and more expensive range of bourbons, the dimly lit and noisy adult setting, and the careful choice of music. The whole context and theme of the advertisement is directed at the more mature consumer who appreciates the smoothness and distinguishing taste of the Bundaberg Red rum filtered through red gum. Based on the theme, visuals and language of the TVC we do not believe that this TVC is "directed" to children. It is directed to consumers over and above 25 years of age. Hence, we believe that the AANA Code for Advertising & Marketing Communications to Children does not apply to this particular TVC. Please refer further to our attached Letter to the ABAC Complaints Adjudication Panel dated 12 June 2009 for further reasoning as to why we believe that this particular TVC does not have a strong or evident appeal to children nor is it directed primarily to children – in particular, as to why we believe that the character and nature of the bear does not have a strong or evident appeal to children in the context of section (b) of the ABAC Code.

(c) AANA Food & Beverages Advertising & Marketing Communications Code

This Code applies to the advertising and/or marketing for "Food and/or Beverage Products". "Food and/or Beverage Products" are defined in this code as any food and/or beverage products other than alcoholic beverages defined in and subject to regulation by the Alcohol and Beverages Advertising Code. This TVC applies to alcoholic beverages defined in and subject to regulation by the Alcohol and Beverages Advertising Code, and hence the AANA Food & Beverages Advertising & Marketing Communications Code does not apply to this advertisement.

(d) Timing of Advertisement

As we have mentioned in our response to the advertisement has only been broadcast at times consistent with the CTICP provisions. Sections 6.7.1 and 6.7.2 state that direct advertisements for alcohol may be broadcast only in M, MA or AV classification periods (i.e. from 8.30pm to 5am) or as an accompaniment to the live broadcast of a sporting event on weekends and public holidays. The advertisement was broadcast on a Saturday at 1.35pm during the live broadcast of an AFL football game between Fremantle and North Melbourne. The decision to broadcast the ad during the live broadcast of the AFL game was because this event is typically enjoyed by an audience of which over 80% are over 18 years of age. This is supported by data from OzTAM - the industry TV audience measurement system. For the particular game that was the subject of this complaint, the OzTAM data shows that 92% of the audience for this particular match was over 18 years of age.

Notwithstanding the issues raised by this particular complaint, with effect from 1 July 2009,

Diageo has separately and voluntarily announced its intention to conduct a 12 month trial whereby we will be moving all of our product advertising on free to air television to after 9pm on every night of the week.

We are pleased to have had this opportunity to confirm our long-standing support for the Advertising Standards Bureau and commitment to uphold the AANA Code of Ethics and the Alcohol Beverages Advertising Code.

THE DETERMINATION

The Advertising Standards Board (“Board”) considered whether this advertisement breaches Section 2 of the Advertiser Code of Ethics (the “Code”).

The Board noted the complainants concerns that the advertisement depicts unsafe behaviour, possibly encourages excess drinking and is appealing to children.

The Board noted that the advertisement is for an alcoholic beverage. As the advertisement is for an alcoholic beverage the provisions of the AANA Food and Beverages Advertising and Marketing Communications Code does not apply. The Board also noted that for a product to come within the bounds of the AANA Advertising and Marketing to Children Code (The Children's Code), the advertisement must be directed to children and must also be for a product that is primarily designed for children. As the product is an alcoholic beverage the Children's Code does not apply.

The Board noted that the advertisement depicts and encourages the consumption of a particular alcoholic beverage. In the Board's view, although the advertisement promoted alcohol consumption, the advertisement did not encourage excessive alcohol consumption that would contravene prevailing community standards on health and safety and did not breach section 2.6 of the Code.

The Board noted the scenes in which a man alters the neon sign outside the bar. The Board agreed with the advertiser that the advertisement did not suggest or depict that the man had consumed alcohol prior to undertaking this activity. The Board noted that the man was depicted wearing safety gear and considered that the advertisement did not depict unsafe behaviour and was not in contravention of section 2.6 on this basis.

The Board considered that the depiction of the man undertaking this task was intended to be depicted in a humorous manner (with the sign being altered to allow the men to take their preferred product into the premises). The Board considered that even the bartender appeared amused by the antics. The Board noted some concern from the complainant and others in the community that young men drink excessively and undertake dangerous or harmful 'pranks'. The Board considered that this advertisement was clearly intended to be and likely to be seen as a fantasy - the inclusion of a talking bear obviously contributing to the unrealistic scenario.

The Board considered that the advertisement did not breach section 2.6 on the basis of encouraging or depicting antisocial or dangerous behaviour that would contravene community standards.

Finding that the advertisement did not breach the Code on other grounds, the Board dismissed the complaint.